

ORDINANCE NO. F-1035

AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, AUTHORIZING  
THE MAYOR AND CITY CLERK TO ENTER INTO A CERTAIN DEVELOPMENT AGREEMENT  
REGARDING THE CITY OF WHEATON MAIN  
STREET REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council of the City of Wheaton, DuPage County, Illinois (the "City") has heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the City that the City undertake a redevelopment project and has heretofore approved a redevelopment plan (the "Plan"), designated a redevelopment project area (the "Project Area") for that portion of the City known as the City of Wheaton Main Street Redevelopment Project Area, and adopted tax increment allocation financing for the Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, it is desirable and in the best interest of the residents of the City for the City to enter into a Development Agreement with Winona Properties, LLC (the "Developer") regarding a portion of said Project Area, in furtherance of the Plan; and

WHEREAS, the Development Agreement is on file with the City Clerk of the City and available for public inspection.

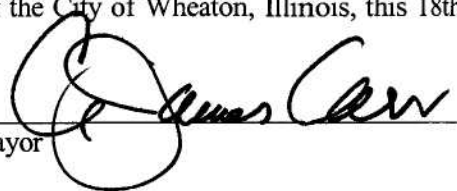
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, a home rule municipality in the exercise of its home rule powers, as follows:

Section 1. That the Mayor and City Clerk be and the same are hereby authorized to execute the Development Agreement between the City and the Developer, in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein and all other documents required to effectuate the purpose of the Development Agreement.

Section 2. That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 3. That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet for as provided by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 18th day of April, 2005.

  
Mayor

ATTEST:

  
City Clerk

Roll Call Vote:

Ayes: Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilwoman Johnson  
Councilman Mork

Nays: None

Absent: Councilwoman Johnson

Motion Carried Unanimously

Passed: April 18, 2005  
Published: April 19, 2005

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is made and entered into as of the 18th day of April, 2005, by and between the CITY OF WHEATON, a municipal corporation, organized and incorporated under the laws of the State of Illinois (hereinafter referred to as the "CITY") and WINONA PROPERTIES, LLC (hereinafter referred to as the "DEVELOPER"); the CITY and the DEVELOPER being sometimes hereinafter referred to individually as the "PARTY" and collectively as the "PARTIES".

### RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Wheaton Main Street Redevelopment Area Project and Plan", dated November, 1999, as amended (hereinafter referred to as the "REDEVELOPMENT PLAN"), the CITY designated a certain area within its municipal limits for redevelopment and revitalization. That part of the City of Wheaton Main Street Redevelopment Project Area which is the subject matter of this AGREEMENT (hereinafter referred to as the "SITE") is legally described on Exhibit "A", attached hereto and made a part hereof.

B. The REDEVELOPMENT PLAN recited that the City of Wheaton Main Street Redevelopment Project Area is characterized by conditions which warrant the designation of the entire area as a "conservation area" within the definitions set forth in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (hereinafter referred to as the "ACT").

C. DEVELOPER, in accordance with the REDEVELOPMENT PLAN, will construct a two-story addition, including an elevator lobby, as well as renovate the existing second floor offices on the SITE as more fully described on Exhibit "B" attached hereto and made a part hereof (the "PROJECT").

D. The CITY has the authority to promote the health, safety and welfare of its inhabitants, to prevent the onset of blight while instituting conservation measures, and to encourage private development in order to enhance the local tax base, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

E. The CITY is authorized under the provisions of the ACT to finance eligible redevelopment project costs in accordance with the conditions and requirements set forth in the ACT.

F. To stimulate the redevelopment of the AREA, and pursuant to the ACT, the corporate authorities of the CITY passed the following Ordinances: (1) Ordinance No. F-0418, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, APPROVING A TAX INCREMENT REDEVELOPMENT PLAN AND REDEVELOPMENT PROJECT FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA; (2) Ordinance No. F-0419, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, DESIGNATING THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA A REDEVELOPMENT PROJECT AREA PURSUANT TO THE TAX INCREMENT ALLOCATION REDEVELOPMENT ACT; (3) Ordinance No. F-0420, AN ORDINANCE OF THE CITY OF WHEATON, DU PAGE COUNTY, ILLINOIS, ADOPTING TAX INCREMENT ALLOCATION FINANCING FOR THE CITY OF WHEATON MAIN STREET REDEVELOPMENT PROJECT AREA. (The Ordinances together with the exhibits appended thereto are sometimes hereinafter collectively referred to as the "ORDINANCES").

G. The City Council of the CITY has determined that the construction of the PROJECT would be, in all respects, consistent with and in furtherance of the REDEVELOPMENT PLAN.

H. The City Council has further determined that the payment or reimbursement of the

REDEVELOPMENT COSTS, as hereinafter more fully defined, would promote the development of the PROJECT consistent with the purposes of the ACT, the REDEVELOPMENT PLAN, the ORDINANCES, and this AGREEMENT.

In consideration of the foregoing recitals and the covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which the PARTIES hereby stipulate, the PARTIES hereby agree as follows:

### **SECTION ONE**

#### **INCORPORATION OF RECITALS**

The recitals set forth in the foregoing recitals are material to this AGREEMENT and are hereby incorporated into and made a part of this AGREEMENT as though they were fully set forth in this Section One, and this AGREEMENT shall be construed in accordance therewith.

### **SECTION TWO**

#### **DEFINITIONS**

"AREA" - means the City of Wheaton Main Street Redevelopment Project Area, as designated in Ordinance No. F-0419 of the CITY.

"CHARGES" - means all generally applicable Federal, State and local governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, fees, liens, claims or encumbrances or non-governmental claims or liens upon and/or relating to SITE and the PROJECT, and insurance premiums due on any policy or policies of insurance required pursuant to Section Nine hereof.

"CITY MANAGER" - means the City Manager of the CITY, or his designee.

"FUND" - means the City of Wheaton Main Street Redevelopment Project Area Special Tax Allocation Fund.

"REDEVELOPMENT COSTS" - means those items identified as such in the BUDGET, to the extent that they qualify as such under the ACT.

"TIF OBLIGATIONS" - means any tax increment allocation financing issued by the CITY.

### **SECTION THREE**

#### **DEVELOPER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

DEVELOPER covenants, represents and warrants to the CITY as follows:

3.01. CONTROL DOCUMENTS: DEVELOPER shall construct the PROJECT in conformance with, and, in connection therewith, shall be governed by, adhere to and obey, any and all applicable Federal, State and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the PROJECT as the same may, from time to time, be in force and effect, including, but not limited to the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* and the Environmental Barriers Act, 410 ILCS 25/1 *et seq* (collectively, the "APPLICABLE LAWS"). Without limiting the generality of the foregoing, the DEVELOPER shall specifically cause construction of the PROJECT to comply with all of the terms and conditions of this AGREEMENT, the ORDINANCES, the Wheaton City Code and the PLANS AND SPECIFICATIONS and each and every exhibit attached to and incorporated therein, together with any required permit (all of said documents, along with the APPLICABLE LAWS, being hereinafter collectively referred to as the "CONTROL DOCUMENTS").

3.02. DILIGENCE: DEVELOPER shall, after obtaining all required approvals, proceed with due diligence to construct the PROJECT.

3.03. MISCELLANEOUS DEVELOPER COVENANTS: (i) the DEVELOPER shall apply for all required government permits, certificates, consents (including, without limitation, appropriate environmental clearances and approvals) necessary to permit DEVELOPER to

construct, occupy and operate the PROJECT; (ii) the execution and delivery of this AGREEMENT by the DEVELOPER, and the performance of this AGREEMENT by DEVELOPER, have been duly authorized by DEVELOPER, and this AGREEMENT is binding on DEVELOPER and enforceable against DEVELOPER in accordance with its terms; (iii) no consent of any creditor, investor, judicial or administrative body, governmental authority or other party to such execution, delivery and performance is required; (iv) neither the execution of this AGREEMENT nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which DEVELOPER is a party or by which DEVELOPER is bound; or (b) violate any restriction, court order or agreement to which DEVELOPER is subject.

3.04. CHARGES: DEVELOPER shall pay promptly when due all CHARGES arising or incurred from and after the date hereof with respect to the SITE or the PROJECT.

3.05. ORGANIZATION AND AUTHORITY: The DEVELOPER is a duly organized and existing limited liability company organized and existing under the laws of the State of Illinois and has the corporate authority to enter into, execute, deliver and perform this AGREEMENT.

3.06. RIGHT OF INSPECTION: The DEVELOPER hereby agrees to permit the CITY'S authorized agents and employees to, during the normal business hours, inspect the PROJECT as it is being constructed.

3.07. RETAIL TENANTS: The DEVELOPER agrees that none of the REDEVELOPMENT COSTS shall provide direct financial support to a retail entity that is initiating operations in the AREA while terminating operations at another Illinois location within ten (10) miles of the AREA but outside the boundaries of the CITY, as set forth in the ACT.



## **SECTION FOUR**

### **CITY'S REPRESENTATIONS, COVENANTS AND WARRANTIES**

The CITY represents, covenants and warrants to the DEVELOPER as follows: (i) the CITY has authority pursuant to State statute as hereinbefore recited, to execute and deliver and perform the terms and obligations of this AGREEMENT; (ii) the execution and delivery of this AGREEMENT by the CITY, and the performance of this AGREEMENT by the CITY, have been duly authorized by the corporate authorities of the CITY, and this AGREEMENT is binding on the CITY and enforceable against the CITY in accordance with its terms; (iii) neither the execution of this AGREEMENT nor the consummation of the transactions contemplated hereby will (a) result in a breach of, default under, or acceleration of, any agreement to which the CITY is a party or by which the CITY is bound, or (b) violate any restriction, court order or agreement to which the CITY is subject.

## **SECTION FIVE**

### **APPROVAL AND CONSTRUCTION OF THE PROJECT**

5.01. **SUBMISSION OF PLANS AND SPECIFICATIONS:** Prior to commencing construction of the PROJECT, the DEVELOPER shall cause to be delivered to the CITY for review and approval completed building plans and construction documents containing working drawings and specifications for the PROJECT in such form as the CITY customarily requires ("PLANS AND SPECIFICATIONS"). The PLANS AND SPECIFICATIONS to be prepared by DEVELOPER shall conform to the CONTROL DOCUMENTS as amended from time to time. Any amendment to any of the PLANS AND SPECIFICATIONS must be submitted by DEVELOPER to the CITY MANAGER for approval, which approval shall not be unreasonably withheld or delayed.

5.02. **CONSTRUCTION OF THE PROJECT:** The DEVELOPER shall cause the



PROJECT to be constructed in accordance with the PLANS AND SPECIFICATIONS, together with such building permits as may be approved by the CITY. Prior to commencing construction of the PROJECT, the DEVELOPER shall submit evidence of financing (including, if applicable, DEVELOPER'S equity) for the total amount of the costs of the PROJECT (as set forth in the BUDGET).

5.03. DEVELOPER'S COST: Subject to reimbursement from the CITY for various costs, as hereinafter provided, the DEVELOPER shall be responsible for the entire cost of constructing the PROJECT. In addition, subject to reimbursement from the CITY as hereinafter provided, the DEVELOPER shall pay, in connection with the development of the PROJECT, such building permit fees, engineering, charges and inspection fees or any other permit or license that are assessed on a uniform basis throughout the CITY and are of general applicability to other property within the CITY.

5.04. TIME FOR COMPLETION: The DEVELOPER shall use due diligence to complete construction (except for tenant build out) of the PROJECT no later than June 30, 2005.

## SECTION SIX

### FINANCING THE PROJECT

6.01. SUBMISSION OF BUDGET: The DEVELOPER'S best estimate of the total costs of the PROJECT is attached hereto and incorporated herein as Exhibit "C" (the "BUDGET"). The items identified with an asterisk on the BUDGET are REDEVELOPMENT COSTS that are intended to be reimbursed by the CITY.

6.02. REIMBURSEMENT OF CERTAIN COSTS: Subject to the terms and conditions of this AGREEMENT (including, without limitation, the provisions concerning the utilization of TAX INCREMENT) and the ACT, the CITY shall reimburse DEVELOPER for

REDEVELOPMENT COSTS, solely from TAX INCREMENT, up to the amount set forth in the BUDGET. Should the DEVELOPER'S actual costs be greater than said amount, the DEVELOPER shall be required to pay such excess costs. Notwithstanding the foregoing, if actual REDEVELOPMENT COSTS for a particular line item shown on the BUDGET exceed the budgeted amount, the CITY shall reimburse DEVELOPER for such excess cost so long as the total amount reimbursed does not exceed the maximum amount set forth below.

Notwithstanding anything herein stated to the contrary, the total amount of reimbursement to the DEVELOPER under this AGREEMENT shall not exceed \$175,000.

In the event there are insufficient funds on deposit in the FUND to pay the amounts which are due and payable to the DEVELOPER HEREUNDER, such amounts shall remain a continuing claim against the FUND until fully paid.

6.03. METHOD OF REIMBURSEMENT: Requests for reimbursement shall be made no more frequently than monthly. To establish a right of reimbursement, DEVELOPER shall submit to a person or department within the CITY (as the same is designated by the CITY MANAGER) a written statement setting forth the amount of reimbursement requested and the specific costs for which reimbursement is sought. The request shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as the CITY reasonably shall require evidencing the right of DEVELOPER to reimbursement under this AGREEMENT. The CITY reserves the right to examine all records relating to all costs paid and/or incurred by DEVELOPER and to obtain from such consultants or experts as the CITY reasonably determines to be appropriate such other information as is reasonably necessary for the CITY to evaluate compliance by the DEVELOPER with the terms hereof.

The appropriate CITY employee or department shall have fifteen (15) days after receipt of

any request for reimbursement from the DEVELOPER to recommend approval or disapproval of such request to the corporate authorities of the CITY and, if disapproved, to provide DEVELOPER in writing and in detail, with an explanation as to why such CITY employee or department is not prepared to recommend such reimbursement. Payment to the DEVELOPER shall be made within ten (10) days of approval thereof by the corporate authorities, if sufficient TAX INCREMENT is on deposit in the FUND.

Assuming that requests for reimbursement are made monthly, disbursements by the CITY to the DEVELOPER also shall be made monthly. The CITY shall not unreasonably withhold its approval of a given request for reimbursement. Notwithstanding the foregoing, the CITY may withhold its approval of a given request for reimbursement if, and for so long as, the DEVELOPER is in default of this AGREEMENT; provided, however, that the CITY shall give notice of such default pursuant to Section 7.03 hereof.

6.04. UTILIZATION OF TAX INCREMENT: The CITY shall deposit all real estate tax increment revenues generated from time to time within the AREA, if any, which are attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the AREA (except for revenues attributable to specific real property that the CITY otherwise agrees to segregate) over and above the initial equalized assessed value of each property in the AREA, as certified by the DuPage County Clerk (the "TAX INCREMENT"), as it is received, into the FUND, and shall disburse the same as follows:

A. First, the CITY shall pay, or allocate amounts sufficient to satisfy, debt service requirements (and any increase in required reserves) due in the current year and coming due in the following year on all outstanding TIF OBLIGATIONS, if any, and any other amount required to be paid by any ordinance authorizing any outstanding TIF OBLIGATIONS;

B. Next, the CITY shall pay, or allocate amounts sufficient to reimburse the CITY for all reasonable and necessary costs incurred by the CITY, to the extent such costs are not reimbursed from the proceeds of any TIF OBLIGATIONS;

C. Next, the CITY shall pay or allocate amounts sufficient to pay, redevelopment project costs for projects within the AREA, including payments pursuant to Section 6.02 hereof, or any other costs permitted under the ACT and any ordinance or ordinances authorizing the issuance of TIF OBLIGATIONS, including but not limited to redeeming, purchasing or refunding any such TIF OBLIGATIONS; and

D. The balance, if any, shall be paid to the DuPage County Collector for distribution to the CITY and the affected taxing districts for deposit in their appropriate accounts, in accordance with the surplus distribution provisions of the ACT.

If TAX INCREMENT on deposit in the FUND is insufficient to make payments due to the DEVELOPER under Section 6.02 and all other amounts due, or reasonably expected to be due prior to the next deposit of TAX INCREMENT, to developers pursuant to other development agreements relating to projects within the AREA ("OTHER AGREEMENTS"), payments under subsection B. hereof shall be made on a proportionate basis. Determination of the amount due to the DEVELOPER shall be calculated based upon the proportion that the maximum amount due to the DEVELOPER under this AGREEMENT bears to the total maximum amount due under OTHER AGREEMENTS.

## **SECTION SEVEN**

### **PERFORMANCE**

7.01. **TIME OF THE ESSENCE**: Time is of the essence of this AGREEMENT.

7.02. **NO WAIVER BY DELAY**: Any delay by a PARTY in instituting or prosecuting

any actions or proceedings or in otherwise exercising its rights hereunder against the other PARTY shall not operate as a waiver of any such PARTY'S rights or to deprive it of or limit such rights in any way. No waiver in fact made by the CITY with respect to any specific default by DEVELOPER shall be considered or treated as a waiver of the rights of the CITY with respect to any other defaults by DEVELOPER or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the DEVELOPER with respect to any specific default by the CITY shall be considered or treated as a waiver of the rights of the DEVELOPER with respect to any other defaults by the CITY or with respect to the particular default except to the extent specifically waived in writing.

7.03. BREACH AND REMEDIES: Upon the breach of this AGREEMENT, any of the PARTIES hereto may, exclusively in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, by action or proceeding at law or in equity, secure termination of this Agreement, secure the specific performance of the covenants and agreements herein contained or recover damages for the failure of performance or any of the above. Notwithstanding the foregoing, neither PARTY shall be liable for consequential damages.

In the event either PARTY shall institute legal action because of breach of any agreement or obligation contained in this AGREEMENT, on the part of either PARTY to be kept or performed, the prevailing PARTY shall be entitled to recover all damages (except consequential damages), costs and expenses, including reasonable attorneys' fees and expenses incurred therefore. The rights and remedies of the PARTIES are cumulative, and the exercise by either PARTY of one or more of such rights or remedies shall not preclude the exercise of it, at the same time or different times, of any rights or remedies for the same default or for any other default by the other PARTY, as provided herein.

Subject to provisions for notice and cure as provided herein, failure or delay by either PARTY to perform any term or provisions of this AGREEMENT shall constitute a default under this AGREEMENT. The PARTY who so fails or delays must, upon receipt of written notice of the existence of such default, promptly commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The PARTY claiming such default shall give written notice of the alleged default to the PARTY alleged to be in default, specifying the default(s) complained of by the injured PARTY. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Any failure or delay by either PARTY in asserting any of its rights or remedies as to any default or alleged default shall not operate as a waiver of any such default or of any rights or remedies it may have as a result of such default, nor shall it deprive either such PARTY of its rights to institute and maintain any actions or proceedings which it may have hereunder.

## **SECTION EIGHT**

### **INDEMNIFICATION**

The DEVELOPER hereby agrees to indemnify, defend and hold harmless the CITY and its officers, agents and employees from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorney's fees and court costs) for the failure of DEVELOPER or any contractor to pay contractors, subcontractors or materialmen in connection with the PROJECT.

## **SECTION NINE**

### **INSURANCE AND DESTRUCTION OF PROJECT**

Prior to the DEVELOPER commencing construction of the PROJECT, the DEVELOPER agrees to provide the CITY with evidence of all policies of insurance which the CITY may

reasonably require in forms and coverages, issued by companies and in amounts reasonably satisfactory to the CITY, including without limitation, comprehensive liability, workmen's compensation and builder's risk insurance coverage.

The DEVELOPER shall furnish or cause to be furnished to the CITY duplicate originals, if requested, or appropriate certificates of insurance evidencing that there shall be in effect on a per project limit basis, comprehensive bodily injury and property damage liability insurance in the amount of at least Two Million and no/100ths Dollars (\$2,000,000.00) combined single limit, per occurrence.

Prior and subsequent to the completion of the PROJECT, DEVELOPER shall cause same to be insured in an amount equal to the full replacement value thereof, such that should any portion thereof be damaged or destroyed by fire or other insurable casualty, sufficient funds shall be available to permit the reconstruction thereof. Should the PROJECT be damaged or destroyed either prior to or subsequent to completion, the DEVELOPER shall either rebuild the PROJECT or repay to the CITY all moneys paid to the DEVELOPER from the CITY under the provisions of this AGREEMENT. In the event that the amount of insurance proceeds is in excess of all amounts due to any lender holding a mortgage on the SITE, such excess shall be applied toward any amounts due to the CITY, if any, under the preceding sentence.

## **SECTION TEN**

### **DEVELOPER'S BOOKS AND RECORDS**

DEVELOPER agrees that the CITY shall have the right and authority to review and audit, from time to time, DEVELOPER'S books and records relating to the PROJECT (including DEVELOPER'S loan statements, general contractor's sworn statements, general contracts, subcontracts purchase orders, waivers of lien, paid receipts and invoices).



## **SECTION ELEVEN**

### **MISCELLANEOUS PROVISIONS**

11.01. **MUTUAL ASSISTANCE**: The CITY and the DEVELOPER agree to execute all documents, including permit applications, and to take all appropriate or necessary measures as required by this AGREEMENT, by the ACT, by the ORDINANCES, the statutes of the State of Illinois or of any other governmental agencies as may be applicable thereto in order to properly effectuate the implementation, purpose, intent and spirit of this AGREEMENT and the completion of the PROJECT in accordance with the CONTROL DOCUMENTS.

11.02. **DISCLAIMER**: Nothing contained in this AGREEMENT nor any act of the CITY shall be deemed or construed by any of the PARTIES, or by third persons, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the CITY or the DEVELOPER

11.03. **COVENANTS RUNNING WITH THE LAND**: It is intended and agreed, that all covenants provided in this AGREEMENT on the part of the DEVELOPER to be performed or observed shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by the CITY, and any successor in interest to the SITE, or any part thereof.

11.04. **PARAGRAPH HEADINGS**: The paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this AGREEMENT and shall not be used to interpret or construe the terms and provisions of this AGREEMENT.

11.05. **COUNTERPARTS**: This AGREEMENT may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same

AGREEMENT.

11.06. RECORDATION OF AGREEMENT: The PARTIES agree to execute and deliver the original of this AGREEMENT in proper form for recording in the office of the Recorder of Deeds, DuPage County, Illinois.

11.07. NOTICES: Notices herein required shall be in writing and shall be served upon the PARTIES, either personally or mailed by certified or registered mail, return receipt requested:

If to the CITY: City Clerk  
CITY OF WHEATON  
303 W. Wesley Street  
Wheaton, Illinois 60187

with a copy to: GORSKI & GOOD  
211 South Wheaton Avenue  
Suite 305  
Wheaton, Illinois 60187  
Attn: Ms. Robin Jones

If to DEVELOPER: Winona Properties, LLC  
123 Front Street  
Wheaton, Illinois 60187

with a copy to: John Gutzke  
Rolewick & Gutzke  
1776 South Naperville Road, Suite 104A  
Wheaton, IL 60187

A PARTY'S address may be changed from time to time by such PARTY giving notice as provided above to the other PARTIES noted above.

11.08. INTEGRATION: This AGREEMENT together with all Exhibits and attachments thereto, constitute the entire understanding and agreement of the PARTIES. This AGREEMENT integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the PARTIES with respect to all or any part of the subject matter hereof. All waivers of the provisions of this AGREEMENT must be in writing and

signed by the appropriate authorities of the CITY or the DEVELOPER.

11.09. AMENDMENT: This AGREEMENT, and any Exhibit attached hereto, may be amended only by written instrument properly executed by the PARTIES or their successors in interest. Execution of any such amendment by the CITY shall first have been authorized by the Ordinance or Resolution duly adopted by the corporate authorities of the CITY.

11.10. SUCCESSORS AND ASSIGNEES: The terms and conditions of this AGREEMENT are to apply to and bind and inure to the benefit of the CITY, the DEVELOPER and their successors and assignees.

11.11. SEVERABILITY: If any provision of this AGREEMENT, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is held invalid, the remainder of the AGREEMENT shall be construed as if such invalid part were never included herein and the AGREEMENT shall be and remain valid and enforceable to the fullest extent permitted by law.

11.12. TERM: This AGREEMENT shall be in full force and effect from and after the execution hereof by the last PARTY to execute the same and shall remain in full force and effect, unless otherwise terminated pursuant to the provisions hereof, until the earlier of December 6, 2022 or until such time as the DEVELOPER has been fully paid and reimbursed pursuant to the provisions of Section 6.02.

11.13. GOVERNING LAW: The laws of the State of Illinois shall govern the interpretation and enforcement of this AGREEMENT.

11.14. NO DISCRIMINATION: The DEVELOPER, in connection with the construction of the PROJECT, shall utilize fair employment practices, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The

DEVELOPER shall take affirmative action to require that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed on or as of the day and year first above written.

CITY OF WHEATON, an Illinois  
municipal corporation,

By: \_\_\_\_\_

Mayor

ATTEST:

Emily M. Connelley  
City Clerk

WINONA PROPERTIES, LLC, an Illinois  
limited liability company,

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF DU PAGE     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. James Carr, Mayor of the City of Wheaton, and Emily M. Consolazio, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS       )  
                                      ) SS.  
COUNTY OF DU PAGE     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of Winona Properties, LLC and  
\_\_\_\_\_, \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the same  
persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and  
\_\_\_\_\_, respectively appeared before me this date in person and acknowledged that they  
signed and delivered the said instrument as their free and voluntary act and as the free and voluntary  
act of said company, for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and  
there acknowledged that she, as custodian of the seal of said company, did affix the seal of said  
company to said instrument, as \_\_\_\_\_ own free and voluntary act and as the free and voluntary act of  
said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public



F-1035  
1770

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

Pin #: 05-16-302-061

Lot 11 (except the East 10 feet thereof and except the North 26.10 feet of the East 18.0 feet thereof dedicated for alley) in Block 7 in the Town of Wheaton, being a Subdivision in Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded June 20, 1853, as Document 7256, in DuPage County, Illinois.

## **EXHIBIT B**

### **DESCRIPTION OF THE PROJECT**

A 2,500 square foot addition which will include a new stairway, elevator tower and lobby at the rear of the building. The renovation will also include the combination of electrical services into the building and the enclosure of refuse containers to service the building.

**EXHIBIT C**

**BUDGET**